

1 **P O R T E R | S C O T T**

2 A PROFESSIONAL CORPORATION

3 John R. Whitefleet, SBN213301

4 350 University Ave., Suite 200

5 Sacramento, California 95825

6 [jwhitefleet@porterscott.com](mailto:jwhitefleet@porterscott.com)

7 TEL: 916.929.1481

8 FAX: 916.927.3706

9 Attorneys for Defendant GERARDO ZAZUETA

10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA**

12 HECTOR del ALTO, by guardian ad litem  
13 ADRIANNA SALGADO,

14 CONSOLIDATED CASE NO. 1:21-CV-  
15 01098-AWI-SKO

16 Plaintiff,

17 v.

18 COUNTY OF STANISLAUS,  
19 STANISLAUS COUNTY SHERIFF'S  
20 DEPARTMENT, GERARDO ZAZUETA,  
21 ESTATE OF XANDER MANN, and DOES  
22 1 to 10,

23 Defendants.

24 **DEFENDANT ZAZUETA'S ANSWER TO  
25 COMPLAINT; DEMAND FOR JURY  
26 TRIAL**

27 Complaint Filed: 3/31/22

28 Defendant GERARDO ZAZUETA hereby submits the following Answer to Plaintiff's  
Complaint.

1 **I. JURISDICTION**

2 1. Answering paragraphs 1 and 2, this answering Defendant contends said paragraphs  
3 contain conclusions of law and not averments of fact for which a response is required, but insofar  
4 as a response is required, Defendant lacks sufficient information or knowledge to enable him to  
5 answer the allegations contained in these paragraphs, and basing his denial on this ground,  
6 generally and specifically denies all allegations contained in these paragraphs.

1           **II. PARTIES**

2           2. Answering paragraph 3, this answering Defendant lacks sufficient information or  
3 knowledge to enable him to answer the allegations contained in these paragraphs, and basing his  
4 denial on this ground, generally and specifically denies all allegations contained in this paragraph.

5           3. Answering paragraph 8, this answering Defendant admits the County of Stanislaus  
6 is a public entity within California. Answering the remaining allegations in said paragraph, this  
7 answering Defendant contends such contains conclusions of law and not averments of facts for  
8 which an answer is required, but insofar as a response is required, lacks sufficient information or  
9 knowledge to enable him to answer the remaining allegations in this paragraph, and basing his  
10 denial on this ground, generally and specifically denies all remaining allegations contained in this  
11 paragraph.

12           4. Answering paragraph 5, this answering Defendant admits the allegations therein.

13           5. Answering paragraphs 6, 7, 8, 9, and 10, this answering Defendant lacks sufficient  
14 information or knowledge to enable him to answer the allegations in these paragraphs, and basing  
15 his denial on this ground, generally and specifically denies all allegations contained in these  
16 paragraphs.

17           **IV.[SIC] ADMINISTRATIVE CLAIM FILING**

18           6. Answering paragraph 1, this answering Defendant lacks sufficient information or  
19 knowledge to enable him to answer the allegations contained in this paragraph, and basing his  
20 denial on this ground, generally and specifically denies all allegations contained in this paragraph.

21           **V. FACTS COMMON TO ALL CLAIMS**

22           7. Answering paragraphs 12 and 13, this answering Defendant lacks sufficient  
23 information or knowledge to enable him to answer the allegations contained in these paragraphs,  
24 and basing his denial on this ground, generally and specifically denies all allegations contained in  
25 these paragraphs.

26           8. Answering paragraphs 14, 15 and 16, this answering Defendant generally and  
27 specifically denies all allegations contained in these paragraphs.

28           ///

**FIRST CLAIM FOR RELIEF**

**(42 U.S.C. § 1983 – Fourth Amendment/Unreasonable Seizure)**  
(Against Defendants County, SCSD, Zazueta and Does 3-10)

9. Answering paragraph 17, this answering Defendant incorporates by reference all  
4 responses to the foregoing paragraphs as if fully set forth herein.

10. Answering paragraphs 18, including subparagraphs 18A and 18B, this answering  
6 Defendant generally and specifically denies all allegations contained in these paragraphs.

11. Answering paragraph 19, this answering Defendant lacks sufficient information or  
8 knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this  
9 ground, generally and specifically denies all allegations contained in this paragraph.

12. Answering paragraph 20, this answering Defendant contends this paragraph  
11 contains conclusions of law and not averments of fact for which an answer is required, but to the  
12 extent an answer is required, generally and specifically denies all allegations contained in this  
13 paragraph.

**SECOND CLAIM**

**(42 U.S.C. § 1983 – Danger creation/Fourteenth Amendment)**  
(Against Defendants County, SCSD, Zazueta and Does 3-10)

13. Answering paragraph 21, this answering Defendant incorporates by reference all  
18 responses to the foregoing paragraphs as if fully set forth herein.

14. Answering paragraph 22, this answering Defendant generally and specifically  
20 denies all allegations contained in this paragraph.

15. Answering paragraphs 23 and 24, this answering Defendant lacks sufficient  
22 information or knowledge to enable him to answer the allegations in these paragraphs, and basing  
23 his denial on this ground, generally and specifically denies all allegations contained in these  
24 paragraphs.

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### **THIRD CLAIM**

**(State law Claims)**  
**(Against Defendants County, SCSD and Does 3-10)**

16. Answering paragraph 25, this answering Defendant incorporates by reference all responses to the foregoing paragraphs as if fully set forth herein.

17. Answering paragraphs 26, 27 including subparagraphs 27A-E, and 28, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in these paragraphs, and basing his denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

**FOURTH CLAIM**

## Negligence (Against Defendant Mann)

18. Answering paragraph 29, this answering Defendant incorporates by reference all responses to the foregoing paragraphs as if fully set forth herein.

19. Answering paragraph 30, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

**FIFTH CLAIM**  
**Statutory Liability – Cal Veh. Code 17150**  
**(Against Defendants DOES 1 and 2)**

20. Answering paragraph 31, this answering Defendant incorporates by reference all responses to the foregoing paragraphs as if fully set forth herein.

21. Answering paragraph 32, this answering Defendant lacks sufficient information or knowledge to enable him to answer the allegations in this paragraph, and basing his denial on this ground, generally and specifically denies all allegations contained in this paragraph.

## **AFFIRMATIVE DEFENSES**

## FIRST AFFIRMATIVE DEFENSE

Based on information and belief, at all times mentioned in the Complaint, Defendant was acting in good faith and is entitled to qualified immunity for the claims asserted pursuant to 42 {02755546.DOCX} 4

1 U.S.C section 1983.

2 SECOND AFFIRMATIVE DEFENSE

3 Based on information and belief, Defendant allege that third persons other than the  
4 answering Defendant, including but not limited to Xander Mann proximately caused and/or  
5 contributed to the damages, if any, suffered by Plaintiff. Accordingly, Plaintiff's recovery is  
6 barred or reduced proportionately by the careless, negligence and willful conduct of the decedent  
7 and/or third parties, which proximately caused any damage claimed in this action. This defense is  
8 interposed only in the alternative and does not admit any of the allegations of the Complaint.

9 THIRD AFFIRMATIVE DEFENSE

10 Damages for non-economic losses cannot exceed the amount specified in Civil Code  
11 section 3333.2.

12 FOURTH AFFIRMATIVE DEFENSE

13 Plaintiff freely and voluntarily assumed the risk of injury and damage alleged in this action  
14 with full knowledge and appreciation of the magnitude thereof about which Plaintiff complains of  
15 in the Complaint.

16 II.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Defendant prays for judgment as follows:

19 1. That Plaintiff's action be dismissed;  
20 2. That Plaintiff take nothing by way of his Complaint;  
21 3. That Defendant be awarded his costs of suit, including attorney's fees; and  
22 4. For such other relief as the Court deems proper.

23 Date: July 15, 2022

24 Respectfully submitted,

25 PORTER SCOTT  
26 A PROFESSIONAL CORPORATION

27 By: /s/ John R. Whitefleet  
28 John R. Whitefleet  
Attorneys for Defendant ZAZUETA

**DEMAND FOR JURY TRIAL**

Defendant hereby demands a trial by jury in the above-entitled action as provided by the Seventh Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

Dated: July 15, 2022

PORTER SCOTT  
A PROFESSIONAL CORPORATION

By: /s/ John R. Whitefleet  
John R. Whitefleet  
Attorneys for Defendant ZAZUETA

PORTER | SCOTT  
350 University Ave., Suite 200  
Sacramento, CA 95825  
TEL: 916.929.1481  
FAX: 916.927.3706